

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2018AP1793

Cir. Ct. No. 2018SC620

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DEBORAH L. O'NEAL,

PLAINTIFF-APPELLANT,

V.

DANIEL L. YOAKUM,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Sauk County:
PATRICIA A. BARRETT, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ Deborah O'Neal, pro se, appeals a money judgment against her in the amount of \$180, in favor of Daniel Yoakum, in this

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

small claims action. Yoakum fails to file a responsive brief. For the following reasons I affirm.

¶2 O’Neal initiated this action against Yoakum, seeking a money judgment on the ground that she used one of her credit cards to purchase a refrigerator and stove for his use, after the two agreed that he would pay her back, and that he has refused to pay all that he owes on this alleged agreement.²

¶3 At trial, O’Neal testified in pertinent part that she agreed to allow Yoakum to use a credit card of hers to purchase the appliances, but only on the condition that he “pay it off right away,” by which she apparently meant that he agreed to pay her back right away. O’Neal called one witness, who provided testimony that corroborated O’Neal’s account about Yoakum’s alleged promise to repay.

¶4 Yoakum testified in pertinent part that O’Neal expressly purchased the appliances for him as Christmas presents. Yoakum called three witnesses, two of whom provided testimony that corroborated Yoakum’s account about O’Neal’s alleged pledge of gifts.

¶5 Based “primarily” on the testimony by the witnesses who corroborated Yoakum’s account, the circuit court found that O’Neal expressly agreed, at the time of the purchases, to gift the appliances to Yoakum, and on this basis the court dismissed O’Neal’s claim. The court awarded a \$180 money

² Yoakum filed a counterclaim against O’Neal on an unrelated topic, which was dismissed by the circuit court. The counterclaim is not at issue in this appeal.

judgment in Yoakum’s favor as costs directly related to his successful defense on O’Neal’s claim against him.

¶6 Yoakum has not filed a brief. As the parties were informed by the May 13, 2019 order of this court, this exposes Yoakum to the risk of summary reversal. However, as this court also explained in its order, reversal is not necessary if the appellant fails to identify error by the circuit court. I conclude that this is the case here.

¶7 O’Neal fails to develop a clear legal argument of any kind. But I now address my best understandings of what she intends to argue. A number of potential arguments all fail because they involve allegations or positions that O’Neal failed to support with evidence before the circuit court or that she failed to argue clearly to the circuit court. For example, she suggests that the court overlooked evidence that Yoakum “made payments” in the period following the appliances purchase. However, O’Neal failed to develop evidence or argument on this topic at trial.³ The scope of review by an appellate court is limited to the record on appeal, *Austin v. Ford Motor Company*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979), and issues not raised or considered by the circuit court will not typically be considered for the first time on appeal. *State v. Holland Plastics Co.*, 111 Wis. 2d 497, 504, 331 N.W.2d 320 (1983).

³ Addressing this initial-payments-by-Yoakum topic in her brief on appeal, O’Neal references an “email from Mr. Yoakum.” However, the only items in the record appearing to be emails are ambiguous on the topic of whether Yoakum made initial payments on the appliances, either on the credit card or directly to O’Neal, consistent with a prior agreement with O’Neal that he would do so.

¶8 O’Neal suggests that the circuit court “would not allow” O’Neal to pursue a pertinent topic, and flatly asserts that “the Circuit Court favored Mr. Yoakum.” These arguments are completely unsupported. And, the transcript of the trial reflects consistent, even-handed efforts by the court to not only allow, but to affirmatively invite, both pro se parties to present whatever relevant evidence and pertinent arguments they wanted to present. In addition, I bear in mind that this is a small claims action. These are “informal” proceedings, in which circuit courts have especially wide discretion in deciding what evidence to admit and consider. *See* WIS. STAT. § 799.209 (describing small claims procedures and characterizing the proceedings as “informal”).

¶9 O’Neal references trial testimony that could support a finding that Yoakum planned the purchase of the appliances, without her knowledge, well in advance of the date of the purchase, which she suggests undermines the testimony that she gifted the appliances to Yoakum. But in referencing what she calls Yoakum’s “premeditation” to make the purchases, O’Neal fails to explain how any such alleged “premeditation”—even if it had been found to be true by the circuit court—would undermine Yoakum’s theory that O’Neal agreed, at or around the time of their joint visit to the Sears store, to buy the appliances as gifts for Yoakum.

¶10 The remaining potential arguments appear to boil down to the following: the circuit court should have fully credited pertinent testimony of O’Neal and the witness that she called, and should have given no weight to pertinent testimony of Yoakum and the witnesses that he called. These suggestions all fail for at least the reason that O’Neal fails to take into account the fact that circuit courts, not appellate courts, determine the credibility of witnesses and the weight to be accorded their testimony, due in part to the unique

opportunity of circuit courts to observe the demeanor and persuasiveness of each witness. *See Lessor v. Wangelin*, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

